JD–10–04
Cleveland, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DEACONESS HOSPITAL, LLC

and Case 8–CA–33930

DEBORAH LANZO–WYPASEK

Susan Fernandez, Esq., for the General Counsel.
Maynard Buck, Esq. (*Benesch, Friedlander Coplan & Aronoff*), of Cleveland, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Cleveland, Ohio, on October 2–3, 2003. The charge was filed on January 14, 2003, by Deborah Lanzo-Wypasek (Wypasek). A complaint and notice of hearing was issued on April 30, 2003, by the Regional Director of Region 8 of the National Labor Relations Board (the Board). The complaint, as amended at the hearing, alleges that Deaconess Hospital (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by discharging Wypasek on or about January 6, 2003, because she complained to the Respondent about wages, hours, working conditions, staffing, supplies, and job assignments, and stating that the Respondent's employees needed union representation. In its answer, served May 13, 2003, Deaconess denied the allegation.

At the hearing, the parties were afforded a full opportunity to call and examine witnesses, present oral and written evidence, argue orally on the record and file posthearing briefs. On the entire record in this proceeding, including my observation of the demeanor of the witnesses, and after considering the posthearing briefs filed by the General Counsel and the Respondent, I make the following findings of fact, conclusions of law and recommended Order.

Findings of Fact

I. Jurisdiction

Deaconess is an Ohio limited liability corporation in the business of operating a primary care hospital facility. During the year preceding issuance of the complaint, the Respondent purchased and received goods valued in excess of $50,000 from points located outside the State of Ohio. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), 2(6) and (7) of the Act.

II. Alleged Unfair Labor Practices

A. The Issues

The principal issue in this proceeding is whether the Respondent violated Section 8(a)(1) of the National Labor Relations Act (Act) by terminating Wypasek.

B. The Facts

1. Background

Deaconess is a primary care hospital located in Cleveland, Ohio. It was purchased by George Saad, its current owner and chief executive officer, in September or October 2000. Wypasek, the charging party, began her employment at Deaconess in 1986 as a nursing assistant. She subsequently worked as a nursing technician until January 2001, when she transferred to the position of secretary for the medical-surgical department, or "Seventh North Floor" (Seven North). Wypasek's duties as a unit secretary consisted of scheduling, ordering supplies, processing physicians' orders, and placing telephone calls to the physicians. Wypasek worked in that capacity until her discharge in January 2003.

By all accounts, Wypasek was a competent and effective employee. In her last performance evaluation, dated September 20, 2002,[1] she received the highest overall rating possible (5 on a scale of 1 to 5). Specifically, she received the top ratings for the categories of teamwork, adaptability, initiative, communication, use of resources, and customer relations. However, she received a rating of 4 for dependability and creativity. Wypasek's performance review was completed by Peggy Blodgett, the director of nursing, since the evaluation covered a period of time (April to September) when there was no Seven North supervisor. However, Marta Flood, the Director of Seven North from September until Wypasek's termination, essentially concurred with that opinion. She described Wypasek as "a great employee. She was one of the best secretaries that I've ever had to work with. Organized, follow through was perfect, phone calls were placed, I got immediate results when I went to Debbie with questions. She was very good with the staff on the floor, facilitating traffic through the department. A very good employee."

As Seven North was without a supervisor between April and mid-September, Wypasek did the staff scheduling and was supervised by Blodgett. In September, Deaconess hired Flood, a registered nurse, as Director of Seven North. Flood reported to Blodgett. As Director of Seven North, Flood was responsible for ensuring that the floor was adequately staffed, that staff had the necessary resources, and holding the employees responsible for compliance with hospital policies and procedures. In particular, Flood was directed by Blodgett to reduce the excessive absenteeism rate and the high use of outside agencies to meet staffing shortages on Seven North by scheduling staff in a more efficient manner.

Shortly after taking over responsibility for Seven North, Flood implemented several changes. She assumed responsibility for scheduling employees and changed the nursing approach from "team care" to "primary care." The change in nursing approach meant that each nurse would be expected to take care of more patients and nurse technicians were expected to take care of a whole side of the floor. In a meeting with Seven North staff on October 16, Flood invited staff to approach her with any issues and addressed the practice of self-scheduling,

[1] Unless otherwise indicated, all dates and months refer to 2002.

which was resulting in staff vacancies. She informed staff that she would be strictly enforcing Deaconess' leave and attendance policies, and setting employees' schedules.[2] Many staff on Seven North had exceeded the permissible amount of leave and Flood wanted to warn them before it was too late. She also explained that those in violation would receive oral warnings.

2. Deaconess' leave-of-absence rules

Any Deaconess employee requesting leave of absence is responsible for completing a leave request form and submitting it to his/her supervisor. Procedure No. 2100.01 of the Deaconess Procedure and Policy Manual (Manual) provides that, "[i]n the case of leave for a serious medical condition, if the leave is foreseeable based on planned medical treatment, an employee is required to make a reasonable effort to schedule treatment so as not to disrupt the operations of the Hospital. This includes 30 days advance notice or such notice as is practicable." Any requests for personal leave "should be requested 30 days in advance or with as much notice as is practicable." Furthermore, family or medical leave may be provided for a "serious health condition that makes the employee unable to perform the essential functions of his/her job, defined as an illness injury, impairment or condition that . . . involves an absence from work or other daily activity for more than (7) seven days and requires continuing treatment or supervision by a health care provider." Furthermore, employees "seeking leave because of a serious medical condition . . . are required to provide a Health Provider's Certification . . . specifying that the leave is necessary because of a serious health condition."[3]

Section 2100.02 warns that the "[f]ailure by the employee to adhere to the leave request/leave extension procedures will be considered an unauthorized absence from work and may result in termination of employment."[4]

Procedure No. 2425.02 provides, in pertinent part, that "[a]ny employee who fails to report his/her absence from work to his/her immediate supervisor (or the Nursing Administration Supervisor) within one (1) hour of their scheduled starting time will be considered absent without notification." The "Positive Disciplinary Table" indicates that one instance of an unreported absence would result in a "Written Reminder," while a second infraction within a period of one year would result in termination. It further indicates that two consecutive instances of unreported absence would also be grounds for termination.[5]

3. Deaconess' history of enforcing its leave-of-absence policy

Deaconess regularly enforced its leave-of-absence policy during 2001 and 2002. During that period of time, former employees Anibal Caraballo, Lolina Alicea, Toni Styranko-Fanara, Lakeya Grady, and Thomas Heathery were each terminated after two absences without notification. Caraballo, an employee in the Environmental Services Department, was terminated

[2] Wypasek did not recall whether she attended the meeting, but acknowledged receiving Flood's typed notes of all meetings.

[3] Procedures Nos. 100.01 and 100.02, which became effective on April 26, 1993 and were still in effect at the time of Wypasek's discharge, were also received in evidence. They were substantially similar to Procedures 2100.01 and 2100.02. However, Procedure No. 100.01 differed from, and presumably was overridden by, Procedure No. 2100.01 to the extent that it defined a serious health condition as an absence from work for more than 3 days, rather than 7 days.

[4] GC Exh. 26.

[5] GC Exh. 4.

in September due to two no call/no show absences that month.[6] Alicea, an employee in the Intensive Care Unit, was terminated based on two no call/no show absences in November 2001. Styranko-Fanara, a nursing assistant on the Two South/Skilled Nursing Unit, was terminated for two no call/no show absences in August 2001. Grady, an employee in the Intensive Care Unit, was terminated in July 2001 for two no call/no show absences in 1 week. Heatherly, an employee in the CT Scan Department, was terminated in September 2001 for two absences without notification over 2 months.[7]

However, there were also instances in which employees were terminated after being absent without notification on more than two occasions, since enforcement of the policy depended on supervisors closely monitoring the time and attendance of their employees. At the request of Blodgett, James Blackwell was terminated in September due to four no call/no show absences in February, July and August. At the request of Angela Dubik, a Seven North supervisor, Danielle Tome, a Seven North secretary, was terminated for four no call/no show absences in April and May. Tracy Cooper, a nursing assistant in the Intensive Care Unit, was terminated in September due to five no call/no show absences in August and September. Krystal Foster, a unit secretary in the Behavioral Health Department, was terminated in June 2001 after five no call/no show absences during that month. Angela Morrow, a Seven North employee, was terminated in September 2001 after four no call/no show absences. Tracy Spraggins, an admissions representative in the Patients Account Department, was terminated in December after 16 absences during November and December. The absences were due to Spraggins' need to care for her husband after he underwent surgery. Spraggins had been told by her department's Director, prior to and during the period of her absences, that she needed to submit FMLA forms completed by her husband's physician, but failed to do so.[8]

4. Wypasek's alleged concerted activity

Wypasek had a history of complaining about staffing issues to her supervisors. Prior to April 2002, she complained to Dubik and Carolyn Sopko, former Seven North supervisors. Wypasek found them to be supportive of staff. During the period of April to September, she made similar complaints to Blodgett and Linda Santiago, a night supervisor. After Flood became supervisor of Seven North in September, there were complaints by nursing staff about the change to primary care nursing from team nursing, the merger of Seven North with Eight North staff, the temporary assignment of nursing staff to other parts of the hospital, as necessary, and the fact that Seven North staff would no longer be able to set their own schedules. Wypasek complained to Flood about staffing issues, the lack of supplies, and tasks that were not being completed by secretaries on other shifts.[9] In Wypasek's view, Flood was not supportive of staff because "she would listen to us, but you could just tell she's blowing us right off." She recalled Flood saying, "[l]et's work together" or "[l]et's get through this."[10] Flood addressed the complaints at a meeting on November 13, when she told Seven North staff that too much time was spent complaining at the nursing desk about "each other, your jobs, the hospital and anything else that you dislike about the profession." She wanted such discussion to

[6] GC Exh. 17.

[7] R. Exh. 14–17.

[8] GC Exh. 16, 18–26.

[9] Wypasek asserted that she complained to Flood about the lack of supplies, but conceded that Flood would follow up on the request. Flood, on the other hand, credibly explained that Wypasek was very good at finding necessary supplies.

[10] Tr. 250.

stop and urged staff to "be a part of [the] solutions or keep the unnecessary comments to yourselves."[11]

Wypasek also discussed the subject of union representation with Flood and other Seven North staff on several occasions. There were several, unspecified occasions when such discussions came up at Seven North's front desk.[12] The subject also came up at a staff meeting on December 16 or 17 when Flood addressed staff dissatisfaction with the merger of Seven North with Eight North, again communicated her dissatisfaction with staff complaints and urged staff to work with what they had. Wypasek responded by telling Flood that she should "stick up for us to the Eight North director instead of doing things the way they wanted it done. They're expecting the RN's and the nurse techs, and the LPN's to do more than humanly possible taking care of so many patients." Notwithstanding the fact that her secretarial job was not greatly affected by the conditions complained about, Wypasek still asserted that staff would receive better treatment if they were represented by a union.[13]

In addition, shortly before Thanksgiving Day 2002, Wypasek attended a farewell party for a Seven North nurse, Alice Albert, at a local restaurant. Wypasek was seated diagonally across the table from Flood. During one conversation, two nurses, Sue Bradburn and Lorie Volandt, discussed the latter's complaints to a nursing association about work conditions at the hospital. Wypasek interjected that such conditions would be different if they had union representation. Wypasek also asked Flood whether she ever got tired of Saad "walking all over" her. Flood replied that work conditions might not be any better under union representation and that "we should just work together, try to get through it and work together."[14]

5. Disciplinary action allegedly motivated by concerted activity

One of the Seven North employees who received an oral warning from Flood on October 16 was Wypasek. However, this was not Wypasek's first warning. She had received a similar warning on April 10. Nor was it Wypasek's last warning. On November 12, she received a written warning from Flood for being absent without notification on November 9. Wypasek disputed that action by insisting that she had notified Blodgett that she would be absent on that day. However, Flood spoke with Blodgett, who could not recall such a conversation. In the memorandum, Flood reminded Wypasek that, at the October 16 meeting, she informed Seven North staff that neither she nor Blodgett would honor any schedule changes "without a written request and a written approval for such request." Flood concluded the memorandum by warning Wypasek that if she was "absent again without proper notification within 12 months you will be terminated according to the policy." Wypasek was aware of Deaconess' Procedure No. HR 2425.02, which required termination under such circumstances.

---

[11] GC Exh. 14.

[12] Wypasek came across as a dedicated, yet bold, longtime employee at Deaconess who had no concerns about discussing union representation in front of her supervisor.

[13] Wypasek's credibility was enhanced by her specific recollection of the details of the meeting and the other employees present. (Tr. 174–177.)

[14] Flood recalled the party and generally discussing the Ohio Nursing Association and how it had done wonderful things representing nurses. However, she did not recall any discussion with Wypasek about the benefits of union involvement at Deaconess. Again, Wypasek's version of her discussion with Flood at this party was more credible than that provided by Flood, since Wypasek had a specific recollection of the people who attended and their conversations on diverse subjects.

On or about December 6, Wypasek informed Flood that she was going to have surgery to remove a wart on her foot. At that time, Wypasek did not state when the surgery would take place nor how long she would be on leave. After consulting with Blodgett, Flood informed Wypasek that she needed to submit the applicable forms requesting leave of absence.[15] Approximately 10 days later, Wypasek showed Flood an appointment card indicating that the surgery was scheduled for December 19. Flood asked Wypasek how long she expected to be out of work and reminded her that she needed to submit the appropriate forms to the human resources department. Wypasek still did not know how much time-off she was going to need, but agreed to get that information and submit the appropriate forms requesting approved leave.[16]

Notwithstanding her agreement to submit a request for leave authorization, Wypasek failed to do so prior to December 19.[17] She was absent without authorization and had the surgery on that date. Wypasek was also supposed to work on December 20, but failed to report on that day as well. Flood saw Wypasek at an office holiday party during the evening of December 20, at which time Wypasek told her that she would submit the required leave-of-absence forms. However, Flood did not believe it was appropriate to discuss Wypasek's absenteeism at the party and simply told her to submit the forms as soon as possible. Wypasek was scheduled to work on December 22 and 23, but again did not report to work nor call in beforehand. Flood attempted to call Wypasek on December 23, but Wypasek's telephone was disconnected as she had moved. On December 26, Wypasek was also scheduled to work, but again failed to report to work. However, on that day, Flood found the leave-of-absence request forms on her desk.[18] The forms, which were purportedly signed by Wypasek on December 16, were delivered by Wypasek to another supervisor's secretary instead of Flood.[19]

---

[15] Wypasek's assertion, that she informed Blodgett about the surgery prior to December 19 and Blodgett agreed to take her off the schedule, was contradicted by the undisputed fact that Wypasek was never taken off the schedule. (Tr. 184–186.)

[16] Wypasek's assertions that Blodgett and Flood, prior to December 19, knew that the surgery would be occurring on that day and informally approved a leave of absence or relaxed the requirement to submit a completed leave-of-absence request, was credibly denied by Blodgett and Flood. Moreover, inconsistencies in Wypasek's testimony made her version of the events simply untenable. On the one hand, she testified as to her "understanding we didn't have to have family leave papers until after seven days." (Tr. 186.) On the other hand, it was her clear understanding that she needed to submit a completed leave-of-absence request and, in fact, complied with that requirement. (Tr. 242.)

[17] Wypasek's testimony that she submitted the leave-of-absence forms to Flood on December 16 was also incredible. In order to accept Wypasek's version, one would have to believe that an extremely competent secretary would have submitted the leave-of-absence request forms to Flood on December 16, that Flood made copies of the forms and, instead of providing Wypasek with the copies of the forms, handed her the original forms, which Wypasek did not realize until a few weeks before trial.

[18] Wypasek conceded that she did not sign the absence request form on December 16, but rather, on December 19 after obtaining it from her doctor after the surgery. She also testified that she wrote "expected date of return, 3–4 WKS", after the portion written in by her doctor. Wypasek's explanation as to why she misdated the form — to have it correspond with the same date that the doctor signed the certification — seriously diminished her credibility. The most reasonable inference that can be drawn is that Wypasek intentionally backdated the form in an attempt to feign compliance with Deaconess' policy requiring prior authorization of absence.

[19] GC Exh. 27.

Upon receiving Wypasek's leave-of-absence request on December 26, Flood reviewed Wypasek's attendance records and determined that her absence of December 19, in conjunction with her prior no call-no show absence on November 9, violated Deaconess' policy regarding unauthorized absences and warranted a recommendation of termination. After consulting with Kimm Kuminkoski, Deaconess' director of human resources, Flood wrote a memorandum to Wypasek, dated December 30, and submitted it to Blodgett. The memorandum indicated that Wypasek had been scheduled to work, but was absent without prior notification on 5 days: December 19, 20, 22, 23, and 26. Blodgett concurred with her recommendation, took it to Saad and received his approval. A termination letter was sent to Wypasek's last known address,[20] but Wypasek did not receive it prior to returning to Deaconess on January 6. On that date, Wypasek reported to the Occupational Health office for clearance to return to work. However, that office referred her to the Human Resources Department, where Kuminkoski handed Wypasek a document indicating that she was terminated for violating Deaconess Policy and Procedure No. 2425.02.

C. Discussion and Analysis

The General Counsel asserts that the Respondent, violated Section 8(a)(1) of the Act by terminating the employment of Wypasek on or about January 6, 2003, as the result of complaints by Wypasek and other Deaconess employees in or around November and December 2002. The complaints regarded wages, hours, working conditions, staffing, supplies, and job assignments, as well as statements by Wypasek and other Deaconess employees that they needed union representation. It is further alleged that Deaconess engaged in such conduct in order to discourage its employees from engaging in these and other concerted activities. Deaconess denies that Wypasek and other employees made any significant complaints about Deaconess or statements about union representation to its supervisors and that, therefore, she did not engage in protected activity. Moreover, even assuming that Wypasek was engaged in protected activity, Deaconess maintains that her termination was proper because she blatantly ignored Deaconess' leave-of-absence policy by being absent without notification on at least two occasions during a 12–month period.

In order to prove a violation of Section 8(a)(1), the General Counsel has the initial burden to establish that the employee engaged in concerted protected activity, the employer had knowledge of the employee's protected activities, the employer took adverse action against the employee, and the employment action at issue was motivated by the employee's protected concerted activity. Once these four elements have been established, the burden shifts to the Respondent to prove, by a preponderance of the evidence, that it took the adverse action for a legitimate nondiscriminatory reason. W*right Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). To find an employee's activity to be concerted, "it must be engaged in with or on the authority of other employees, and not solely by or on behalf of the employee himself." *Meyer Industries,* 268 NLRB 443, 497, revd. sub nom. *Prill v. NLRB,* 755 F.2d 941 (D.C. Cir.), cert. denied, 474 U.S. 948 (1985). Furthermore, concerted activity "encompasses those circumstances where individual employees seek to initiate or to

[20] The termination letter was sent by certified mail to Wypasek at her last known address. However, the letter was returned because Wypasek moved around November 15. Wypasek's contention that she provided the Respondent's human resources office with her new address was not credible. She initially testified that, prior to Thanksgiving Day, she "either" put her new address in the box on the door to the human resources office or slid it underneath the door. However, on rebuttal, Wypasek testified that she provided her new address to the hospital after Thanksgiving Day.

induce or to prepare for group action, as well as individual employees bringing truly group complaints to the attention of management." *Meyers Industries*, 281 NLRB 882, 887, affd. sub nom*. Prill v. NLRB,* 835 F.2d 1481 (D.C. Cir.), cert. denied, 487 U.S. 1205 (1988).

It is undisputed that Wypasek periodically handed notes to Flood with suggestions or complaints during the period of September to December. She also complained to Flood about tasks not being completed by other secretaries and shortages of supplies. However, it is well settled that an individual complaint about an employee's own work is not concerted activity. *Mushroom Transport Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964). On the other hand, the protections of Section 7 of the Act do apply when an employee brings a complaint to management on behalf of himself and other employees. *Beta Steel Corp. v. NLRB,* Nos. 98-3658 and 98-4063, 2000 U.S. App. LEXIS 4112 (7th Cir. 2000) (unpublished disposition) (employee who was suspended after submitting a safety suggestion to management on behalf of another employee was engaged in protected activity); *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 862–863 (2000) (employee who questioned and commented on employer's proposed change in company's break policy at employer-called meeting was espousing cause of her coworkers and was, therefore, engaged in concerted activity); *Le Madri Restaurant,* 331 NLRB 269, 276 (2000) (employee expressing concerns about working conditions at meeting called by employer engaged in concerted activity).

Wypasek credibly testified that, during a retirement party in November, she joined in a discussion with two nurses about the deterioration of working conditions, commented that conditions would be better if there was union representation, and also asked Flood whether she ever got tired of Saad "walking all over" her. In addition, at a staff meeting held around the middle of December, Flood addressed staff dissatisfaction with the merger of Seven North with Eight North. During the meeting, Wypasek urged Flood to "stick up" for her staff, complained about working conditions, and commented that staff would be treated better if they were represented by a union. Both instances constituted concerted activity and bore a "relation to legitimate employee concerns about employment-related matters" and were, therefore, protected under Section 7 of the Act. *Kysor Industries Corp.*, 309 NLRB 237, 237 fn. 3 (1992).[21]

Having demonstrated that Wypasek engaged in protected concerted activity, the General Counsel has the burden of showing that such conduct was a motivating factor in Deaconess' decision to terminate Wypasek. As shown below, I find that the General Counsel has failed to show that Wypasek's protected concerted activity was a motivating factor in the discharge. Even if I had found that the General Counsel met his initial burden, I also find that the Respondent would have discharged Wypasek even in the absence of protected activity.

Unlawful motivation may be established by direct or circumstantial evidence. All of the key management employees (Blodgett, Flood, and Kuminkoski) denied any motivation attributable to Wypasek's comments about working conditions or union membership. However, in the absence of direct evidence, animus may be inferred from "the total circumstances

[21] Wypasek's vague testimony about periodic discussion of staffing, scheduling, and the virtues of union membership, by her and other staff at the nursing desk, failed to demonstrate concerted activity. Such discussions did not take place at meetings called by management and the circumstances of those encounters were simply too vague with respect to Flood's possible presence and the nature of her statements, if any. In addition, there was no testimony indicating that Wypasek or any other staff complained about work conditions at the November 13 staff meeting when Flood informed them that the nursing desk was an inappropriate venue to voice complaints.

proved." Such a finding can rely on the timing of an employee's discharge and a blatant disparity between the treatment of that employee and other employees who engaged in similar work violations. *Sears, Roebuck & Co.,* 337 NLRB 443, 444 (2002).

Arguably, the timing of the decision to discharge Wypasek may not have been that long after the concerted activity (about 2 weeks), but there was one significant intervening event during that time — Wypasek's flagrant violations of the Respondent's leave-of-absence policy. Furthermore, the facts do not support a conclusion that Wypasek was the victim of disparate treatment. The General Counsel contends that Wypasek was terminated based on two absences without notification, while the Respondent afforded more lenient treatment to others. However, Flood's memorandum listed five, not two, such absences (December 19, 20, 22, 23, and 26). Moreover, the evidence strongly supports the Respondent's contention that it regularly enforced its leave-of-absence policy during 2001 and 2002. During that period of time, it terminated five other employees in various departments for being absent without notification on two occasions. It also discharged six other employees for being absent without notification on more than two occasions. It is clear that, on some occasions, the Respondent's absenteeism policy was not strictly enforced by some supervisors. In fact, the case of Tracy Spraggins was somewhat similar to that of Wypasek, since she too had a supervisor who sought, on several occasions to get her to submit a leave-of-absence request. In any event, administrative oversight on the part of some supervisors in their enforcement of the Respondent's leave-of-absence policy does not reflect unlawful motivation. *The Kroger Co.,* 339 NLRB No. 88, slip op. at 17 (2003). Furthermore, it was Flood who decided to take disciplinary action and her management approach was consistent with Deaconess' well-defined and nondiscriminatory leave policy.

Moreover, the totality of the circumstances does not support a finding of animus on the part of Flood, Blodgett, or Kuminkoski.[22] Flood knew that there were complaints by Wypasek and the nursing staff and she responded by urging them to work together to "get through this." Wypasek's concerted activity amounted to a complaint that Flood was not standing up to the Eight North supervisor and that a union would be helpful under such circumstances. However, Flood credibly testified that she was not impacted by such remarks in her subsequent conduct toward Wypasek. The credible evidence reveals that Flood, a relatively new supervisor, sought to implement a more efficient nursing care approach on Seven North. She was entrusted with the responsibility of reducing excessive absenteeism and the use of outside agencies to fill staff vacancies. In December, Flood was confronted with a flagrant violation by Wypasek, who had received three warnings about absenteeism in April, October, and November. The warnings occurred prior to the December staff meeting when Wypasek commented about work conditions and union representation. Accordingly, Flood was left with no choice but to discuss the situation with Kuminkoski, who told her that she had no choice but to initiate the process for termination.

Conclusion of Law

The General Counsel has failed to show by a preponderance of the evidence that the Respondent violated Section 8(a)(1) of the Act by discharging employee Deborah Lanzo–Wypasek.

[22] There was no evidence to support a finding of animus on the part of the other Deaconess listed at para. 4 of the complaint: Carolyn Sopko, Angela Dubik, and Denise Anderson. In addition, Saad was not named in the complaint.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[23]

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C. February 18, 2004

Michael A. Rosas
Administrative Law Judge

[23] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.